Collaborative Problem Solving through
Environmental Conflict Resolution

An INTRODUCTION

When striving to accomplish natural resource protection and environmental management goals,

an array of public and private interests must be balanced.

Conflicting interests, values, and information are inevitable and offer opportunities for creative problem solving.

When such conflicts are not managed effectively, there are social, financial, legal, environmental, and institutional costs.

Carl shoves Roger, Roger shoves Carl, and tempers rise.

For Example,

✓ **Protracted, costly environmental litigation**

✓ **Unnecessarily lengthy project & resource planning processes**

✓ **Escalating antagonism and hostility among engaged and affected groups and individuals**

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and Lost Opportunities:

✓ **Costly delays in implementing needed environmental protection measures**

✓ **Foregone public and private investments when decisions not timely or appealed**

✓ **Lower quality outcomes when plans and decisions not fully informed**

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There are constructive alternatives to business as usual through

Environmental Conflict Resolution (*ECR*)

ECR can *produce*

- ✓ **High quality agreements among diverse groups that can be implemented, will endure, and reduce long term costs**

- ✓ **Improved collective capacity among participants to manage & resolve future issues**

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ECR can *reduce*

✓ **Environmental litigation and time required to settle suits**

✓ **Total costs of settlements and penalties to parties**

✓ **Shared costs of implementation**

✓ **Likelihood of successful appeals**

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"Don't make me come down there."

Origins of ECR

- ❖ **Grew out of the Alternative Dispute Resolution (*ADR*) movement over 30 years ago**

- ❖ **Based on *non-adversarial* techniques of principled negotiation or interest-based bargaining**

- ❖ **Applied to *multi-party negotiations* about environmental issues**

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Recent Policy Direction

❖ **Administrative Dispute Resolution Act of 1990, amended 1996**

❖ **Regulatory Negotiation Act of 1990**

❖ **Environmental Policy and Conflict Resolution Act of 1998**

❖ **Alternative Dispute Resolution Act of 1998**

❖ **Environmental Policy and Conflict Resolution Advancement Act of 2003**

❖ **Executive Order on Cooperative Conservation, 2004**

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ECR is Collaborative Problem Solving

- ECR can be applied in low or high conflict situations where mutual trust among participants varies.

- ECR can take place in ad hoc, collaborative settings of assisted negotiation (work groups, advisory committees, task forces) or in more formal problem solving forums (negotiated rulemaking, court-referred mediation).

Essential ECR Characteristics

- ✓ **Direct (face-to-face) deliberation**
- ✓ **Over environmental, natural resources, or public lands issues and related economic and social concerns**
- ✓ **Among representatives of multiple interests and affected communities**

ECR Characteristics (cont'd)

- ✓ **May involve consensus building, joint fact finding, mediation, and other forms of assisted negotiation**
- ✓ **Through an open and flexible process designed by the participants**
- ✓ **In accordance with decision rules determined by the participants**

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ECR Characteristics (cont'd)

- ✓ **Sharing relevant, broadly-based information and knowledge**

- ✓ **Often with assistance of an impartial third party to mediate or facilitate**

Applications for ECR
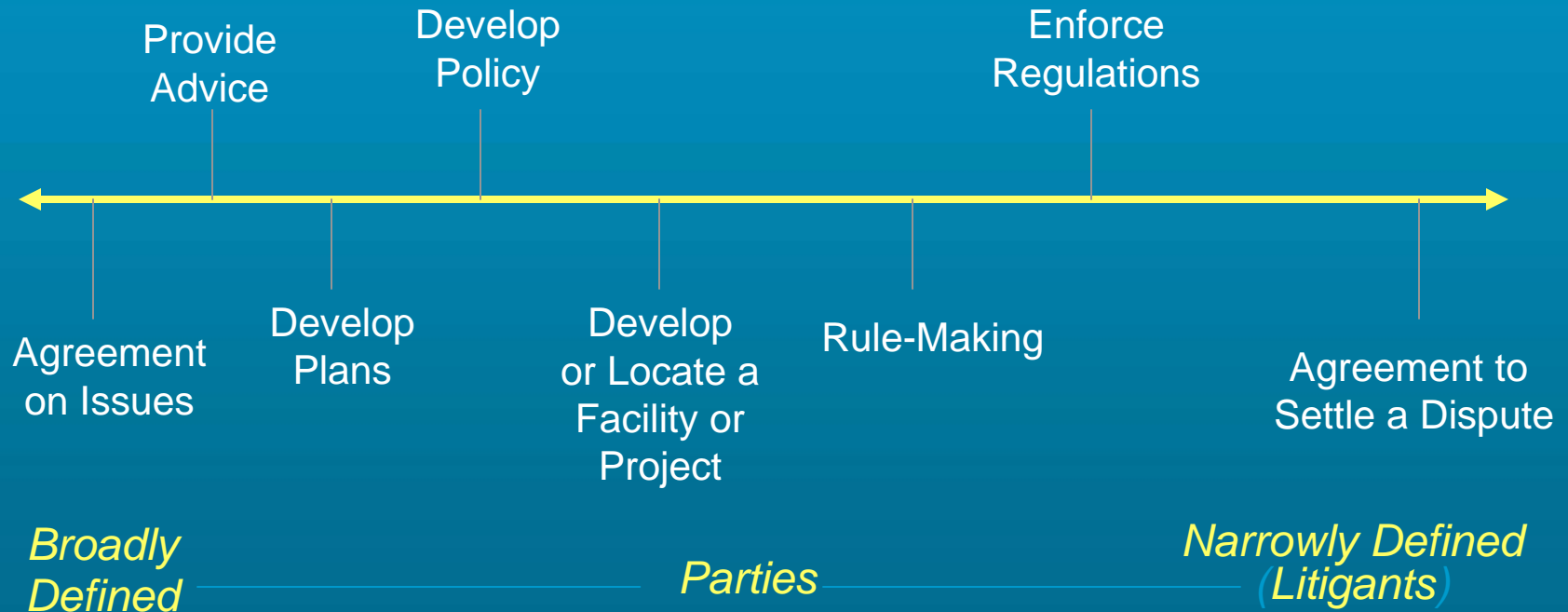
ECR Approach Will Vary

PROACTIVE APPROACH

❖ Issues are known to be controversial or contentious

❖ Involve stakeholders early on in the process

❖ Better anticipate and manage inevitable conflicts that will emerge

❖ Build consensus, narrow range of disagreement on ways to address the issues

REACTIVE APPROACH

❖ A contentious issue has already developed into a dispute or impasse

❖ A mediated process can be used to try to reach a solution before turning to litigation

❖ Parties already in litigation and referred to mediation

⬅ – – – – – – – – – – – – – – ➡

UPSTREAM   **DOWNSTREAM**

Some Examples…

Florida Everglades Ecosystem

U.S. Army Corps, U.S. Fish and Wildlife, National Park Service and So. Florida Water Management District have many interagency conflicts to overcome in order to ensure the success of a $7.8 billion effort to restore the Everglades ecosystem over the next 35 years.   The U.S. Institute has assisted them in resolving technical disputes on two long-delayed restoration projects.

Photograph courtesy of the South Florida Water Management District

Grand Canyon Overflight Noise Controversy

In 1987, Congress directed the NPS and FAA to reduce noise from air tour aircraft over Grand Canyon National Park to "substantially restore natural quiet."

After considerable work and ongoing law suits, NPS and FAA are working together with U.S. Institute assistance and are now designing an ECR stakeholder process to resolve this long-standing issue.

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St. Croix River Crossing

Through initial convening by FHWA and the U.S. Institute, this collaborative problem-solving process is reaching agreement on both a new bridge and the historic lift bridge between Minnesota and Wisconsin over the St. Croix River at Stillwater, MN. Stalled negotiations were jumpstarted after a systematic conflict assessment and collaborative design effort.

Bankhead National Forest Collaboration

One of the few remaining patches of federal land within Alabama, the Bankhead NF is planning to sustain and restore the native forest community to the Southern Cumberland Plateau region.

After an initial assessment, a multi-stakeholder group was formed and reached agreement on a preferred alternative for the Plan in July 2003. The group continues to work on an active monitoring and adaptive management effort.

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Fire Island National Seashore Off-Road Driving Negotiated Rulemaking

- Fire Island National Seashore needed to develop new off-road driving regulations to better protect the fragile barrier island, which also provides critical habitat for endangered species. With no established roads, the beaches serve as the primary auto access for the island's year-round and seasonal residents.

- The existing regulations had evolved over a period of 35 years and had resulted in long-standing and serious controversy.

- The process recently concluded, and the National Park Service has incorporated the advisory committee's consensus-based recommendations into the proposed new regulations.

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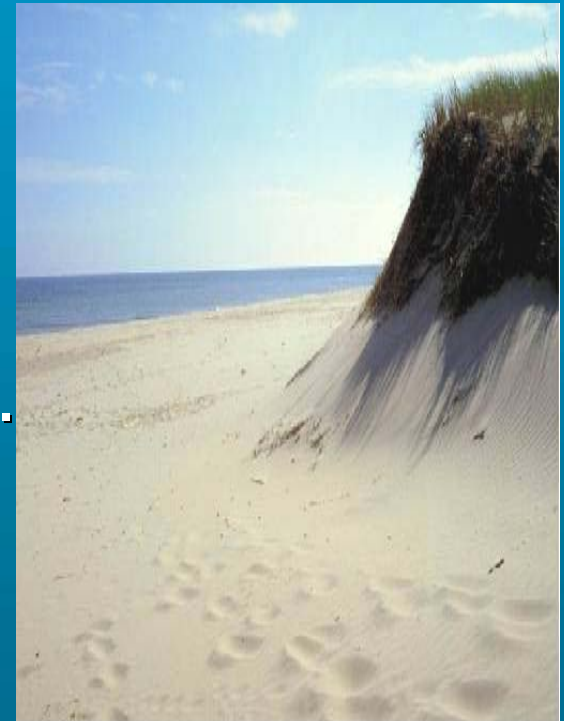
More Examples…

Federal department leaders are endorsing 8 basic principles for engagement in ECR.

Basic Principles
for Agency Engagement

- ➤ **Informed Commitment**

- ➤ **Balanced Representation**

- ➤ **Group Autonomy**

- ➤ **Informed Process**

- ➤ **Accountability**

- ➤ **Openness**

- ➤ **Timeliness**

- ➤ **Implementation**

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ECR works best when

➤ **Outcomes from traditional approaches are uncertain, costly, or unsuited to problem**

➤ **Multiple parties are needed to proceed with resolving issue or implementing agreement**

➤ **An assessment establishes willingness and capacity of all parties to engage**

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Why ECR not used more often

"Norman won't collaborate."

- <u>**Lack of awareness**</u> **of benefits & appropriate use of ECR**
- <u>**Misinformation**</u> **about process requirements & expectations**
- <u>**Procedural complexity**</u> **re. substantive & procedural laws & regs**
- <u>**Staff time and skills**</u> **often lacking**
- <u>**Funding**</u> **for process costs limited**

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Getting Started on a Case →

- **Scope issues**
  - e.g., complexity of issues, level of uncertainty, # of parties (other agencies, affected communities), experience w/ similar issues

- **Consider alternatives**
  - e.g., available forums, previous success, risk analysis

- **Seek advice**
  - e.g., Agency dispute resolution specialists, federal ECR advisors or consultation teams, U.S. Institute for Environmental Conflict Resolution

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Getting Started on a Case →

➤ **Determine need for third-party assistance**

  ➤ Consider conflict history and conflict potential, long-term relationships among parties, skills & experience of available staff

➤ **Conduct situation/conflict assessment**

➤ **Determine willingness and ability to meet "Basic Principles of Agency Engagement"**

Federal ECR Programs Exist

"Janice is the head of our Conflict Resolution Committee. Go ahead, see if you can rile her."

- ➢ **CADR, DOI**
- ➢ **CADR, DOT**
- ➢ **CPRC, EPA**
- ➢ **DRS, FERC**
- ➢ **DRS, Navy**
- ➢ **USIECR**

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Proposed Actions

➢ **Leadership Commitment**

➢ **Education**

➢ **Skill Building**

➢ **Resources**

➢ **Evaluation…..**

Available Resources

➤ **National ECR Roster** **(www.ecr.gov)**

➤ **ACR, Environment & Public Policy Section** **(http://www.mediate.com/acrepp)**

➤ **ABA, Dispute Resolution and Environment Sections**

➤ **National ECR Organizations and Firms**

More Resources

- **Academic Research and Practice Centers, e.g.,**
    - **Indiana Conflict Resolution Institute (http://www.spea.indiana.ed/icri/icri.htm)**
    - **University of Michigan Ecosystem Management Initiative (http://www.snre.umich.edu/ecomgt//aboutemi.htm)**
    - **University of Virginia Institute for Environmental Negotiation (http://www.virginia.edu/ien)**
    - **Conflict Resolution Information Source (CRInfo) (http://www.crinfo.org)**

More Resources

- **State and Regional ADR Programs, e.g.,**
  - **Policy Consensus Initiative (PCI) (http://policyconsensus.org)**
  - **State-government programs, e.g.,**
    - **Florida, Maryland, Oregon**
  - **Sonoran Institute (www.sonoran.org)**
  - **Redlodge Clearing House (http://relodgeclearinghouse.org)**

- **Federal Court ADR Programs, Rosters, e.g.,**
  - **Mediation Program for the US District Court of DC**